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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 07 2007

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of a member of the professions holding an advanced degree. The petitioner seeks employment in the field of cancer research. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, while we withdraw the director's implication that Chinese-language articles can only influence the field to a limited degree (China's population is over 1 billion), we uphold the director's ultimate finding of ineligibility. Specifically, the petitioner's most promising work in his *current* area of research had only just been or had yet to be published as of the date of filing. Thus, the community reaction to this work cannot be gauged. As will be discussed in more detail, the petitioner's prior research in China appears wholly unrelated to his current work.

Moreover, the petitioner is seeking a waiver of a requirement that he has already fulfilled. Specifically, on December 28, 2006, the Director of the Texas Service Center approved a visa petition in behalf of the petitioner, receipt number SRC-07-054-52238, based on an approved alien employment certification from the Department of Labor. This petition gives the petitioner a priority date of October 1, 2004, prior to the priority date in this matter (September 28, 2005). As stated in *Matter of New York State Dept. of Transportation,* 22 I&N Dec. 215, 223 (Comm. 1998), nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.

> (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. degree in Biology from Xiamen University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. at 215, has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, cancer research and that the proposed benefits of his work, improved diagnosis and treatment of breast cancer, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

According to his curriculum vitae, the petitioner obtained his baccalaureate at Anhui Agricultural University. The record also contains the petitioner's Doctor of Science degree from Xiamen University, issued in 1999. The petitioner's Ph.D. research focused on marine nematodes. According to his curriculum vitae, the petitioner then worked as an assistant professor at Shanghai University where he studied the Chinese herbal treatment Linzhibao. The petitioner published several articles in Chinese-language journals during this time. The director concluded that such articles could only have a limited impact. While we withdraw this broad conclusion, we emphasize that it is the petitioner's burden to demonstrate the influence of a given journal or article. In June 2001, the petitioner accepted a position as a postdoctoral fellow in the laboratory of [redacted] at Tufts University. In August 2003, the petitioner followed [redacted], securing a research associate position at Northwestern University in Evanston, Illinois.

[redacted] of Xiamen University asserts that she supervised the petitioner's Ph.D. research. Professor Tang states that the petitioner's work there "represents a major breakthrough in the free-living nematodes [sic] and is considered a classic reference in this field of study." On appeal, an associate professor at Shantou University, [redacted], asserts that the petitioner's Ph.D. work has "significantly advanced" professor [redacted]s own research. The petitioner has also submitted evidence that this work has been cited twice in China, including by [redacted] The petitioner has not demonstrated, however, that his research on free-living nematodes in the East China Sea is even remotely related to

his current field, breast cancer research in general or the BRCA2 gene specifically. Without an explanation of the nexus between his Ph.D. research and current work, we cannot conclude that any achievements with nematodes reflect on his ability to influence the field of breast cancer research. Similarly, the petitioner's article on Maize pollen, which has been cited once, would seem to be wholly unrelated to his current research. Regardless, the level of citations for these articles is not indicative of an influence on the field as a whole.

The petitioner also submitted evidence that his research on [redacted]s anticancer properties has been cited by three published articles in China, including in one by researchers at the same institution where the petitioner was working when he published his work on Linzhibao. Finally, the petitioner submitted evidence that websites of unknown significance have referenced this work. Website postings do not undergo the type of peer-review that journals require for their articles. Not every website has a distinguished reputation for presenting accurate information. Thus, without additional evidence, we cannot evaluate the website materials. The remaining three citations are not significant. While the petitioner previously submitted more than three Chinese-language citations in response to the director's request for additional evidence, the director dismissed this evidence for lack of certified translations, now submitted on appeal. A review of the Chinese characters for the authors of the additional articles citing the petitioner's work reveals that they are articles by the petitioner's coauthors. While self-citation is a normal and expected practice, such citations do not demonstrate the petitioner's influence beyond his immediate circle of collaborators. Finally, while the petitioner's research with Linzhibao involved its anticancer properties, the record lacks evidence explaining the connection between this work and his current work with the binding proteins of the BRCA2 gene.

The main focus of most of the petitioner's references is his work with [redacted]. As of the date of filing, the petitioner had only authored one article relating to this work that had already been published and, thus, disseminated in the field. [redacted] explains that the petitioner has focused his research on BRCA2, a recently discovered breast tumor suppressor gene. The petitioner demonstrated that the protein MAGE-D1 can interact with BRCA2 and is required to suppress tumor growth. The petitioner's discovery that some breast tumor cells have lower expression of MAGE-D1 suggests that suppression of this protein "is involved in the tumorigenesis of a subset of breast cancer." This work was published in *Cancer Research* approximately three months prior to the filing of the petition.

According to [redacted]o, the petitioner also demonstrated that another protein, DSS1, is required for the stability of BRCA2. [redacted]o asserts that this finding has implications for the genetic treatment of breast cancer and "is the first time in the world engogenous human DSS1 was detected." While this work has been accepted in *Oncogene,* it was not yet published as of the date of filing.

Finally, [redacted] asserts:

> We discovered a new BRCA2 binding protein and named it centrobin. At the beginning, we had no clue how to work on this protein and what it could contribute to the tumorigenesis. After an extended period of research, it was found that the protein

> was localized to centrosome, a very important organelle in [a] cell that is responsible for cell division and cell structure integrity by nucleating microtubules. Defects in this organelle will impair cell division and genomic instability, and in this way cancer arises. [The petitioner] further demonstrated, by employing a siRNA technique, what happens to knockdown this protein. With his broad knowledge, his finest skills, his rigorous attitude and his commitment toward research, he found that [the] centrosome duplication process will stop in a cell if it lacks this protein, centrobin, and it can not finish the cytokinesis when the cell is going to divide, that leads to cells' death.

[redacted] explains that censtrosome is overamplified in most tumors, suggesting it plays a role in tumor genesis. Thus, [redacted] continues, the petitioner's work is important for understanding cancer and generates a new philosophy and goals for cancer therapy. [redacted] asserts that the petitioner's work led to additional funding from the National Institutes of Health (NIH). While this work had been accepted by the *Journal of Cell Biology*, it had yet to be published as of the date of filing.

[redacted] Director of the Division of Cancer of Biology at Evanston Northwestern Research Institute and a coauthor of some of [redacted]s articles, reiterates much of [redacted] assertions and also discusses the petitioner's technical skills. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for an alien employment certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

[redacted], Chair of the Department of Radiation and Oncology at the Tufts-New England Medical Center and a coauthor of articles authored by [redacted] and [redacted] characterizes the petitioner's breast cancer research as "acclaimed," but provides no examples of widespread recognition of this work. While [redacted] asserts that the alien employment certification process might "force" the petitioner to abandon his current research, we reiterate that his current employer has secured an approved alien employment certification in the petitioner's behalf.

[redacted] an associate professor at Harvard Medical School, asserts that he knows of the petitioner "through his publications." As of the date of filing, however, only one of the petitioner's articles on breast cancer research had been published. Moreover, [redacted]e asserts that the petitioner has "published several papers in internationally circulated major journals. While we do not concur with the director's implication that Chinese-language articles can never be influential, the record lacks evidence that the Chinese-language journals in which the petitioner's articles appear are "internationally circulated major journals." [redacted] further asserts that the petitioner has "participated as a judge others' papers for a major journal in the field." The petitioner submits no evidence to support this assertion and the petitioner does not even list such duties on his curriculum vitae. Finally, [redacted]e asserts that the petitioner is a member of the American Association of Cancer Research (AACR), which "requires outstanding achievement of its members." As noted by the director, however, the petitioner is only an associate member of AACR. The membership letter encourages the petitioner to promote associate AACR membership among his colleagues "so that they too will be able to take advantage of these

excellent benefits for *scientists in training*." (Emphasis added.) The record contains no evidence that AACR is an exclusive association. In light of the above, [redacted] letter has limited value.

[redacted] Director of the Program of Signal Transduction at the Medical University of Ohio, asserts that he knows the petitioner "through his outstanding publications and previous conversations and communications with him since our fields are closely related." In response to the director's request for additional evidence, the petitioner submitted a letter from [redacted], Director of the Electron Microscopy Facility at the Medical University of Ohio, who indicates that the petitioner came to his laboratory at that university "to learn techniques and to obtain data which has recently been published in the *Journal of Cell Biology*." That article, on which [redacted] is listed as a coauthor, had only been accepted for publication as of the date of filing. Both [redacted] and [redacted] praise the petitioner's skills and results but fail to explain how the petitioner's work has influenced the field beyond his collaborators at Tufts, Northwestern and the Medical University of Ohio.

The petitioner submitted more independent letters in response to the director's request for additional evidence. Specifically, the petitioner submitted a letter from [redacted], Co-Director of the Breast Cancer Program at the Sidney Kimmel Comprehensive Cancer Center at Johns Hopkins, who has coauthored an article with [redacted] and [redacted] but has never worked directly with the petitioner. In addition, the petitioner submitted a letter from [redacted], a professor at the University of Texas MD Anderson Cancer Center who asserts that he met the petitioner when visiting [redacted]s laboratory. According to his curriculum vitae, [redacted] has coauthored an article with [redacted] and [redacted]. The record also contains letters from [redacted], a professor at the University of Colorado; [redacted]rs, an associate professor at the University of Pittsburgh; and [redacted]x, an associate professor at the Simon Fraser University.

These independent references all discuss the work explained in [redacted] letter and affirm its importance in both centrosome research and cancer research. None of the references explain how their own work has been influenced by the petitioner. For example, none of them claim any interest in pursuing research on genetic treatment using DSS1 or on centrobin based on the petitioner's discovery of and results with these proteins. Moreover, the references purport to know of the petitioner's work through his multiple publications, even though as of the date of filing he had published only one article on breast cancer research and most of the references would appear from their curriculum vitae to have no background in China, where the remainder of the petitioner's articles were published.

On appeal, the petitioner submits a letter from [redacted], an associate professor at the Washington University School of Medicine. [redacted] asserts that the petitioner's work with MAGE-D1 is "one of the most important new contributions to research involving BRCA2 and cancer" and that his other work constitutes "important discoveries." While [redacted] asserts that he has discussed the petitioner's research "in the journal clubs and made citation of his work in our reviews," the record contains no evidence that [redacted], or anyone else, had cited the petitioner's breast cancer research as of the date of filing.

Finally, [redacted] an associate professor at the Mount Sinai School of Medicine, asserts that he learned of the petitioner's research when he read the petitioner's article in *Cancer Research* regarding MAGE-D1. [redacted] praises the results reported in this article, asserting that it provides an important target for the development of breast cancer therapy. [redacted] does not assert that he is pursuing any therapies based on the petitioner's work with MAGE-D1 or identify another laboratory or pharmaceutical company that is doing so.

The petitioner's most significant work, the discovery of the new BRCA2 binding protein centrobin, had yet to be published. Thus, the petitioner bears a heavy burden of demonstrating how this discovery could have already influenced the field as of the date of filing, the date as of which the petitioner must demonstrate eligibility. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). While the petitioner has provided some evidence that independent researchers believe that the petitioner's MAGE-D1 research has promising applications, the record lacks evidence that this work, published only three months prior to the filing of the petition, had already influenced the field as of that date.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. At best, the petition was filed prematurely, before the influence of the petitioner's work in the area of BRCA2 proteins could be gauged.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.